

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Original filed by ECF

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EUGENE R. DANIELS, III,

:

Plaintiff,

: Docket No.:07-Civ-8007(WHP)

-against-

:

NEW YORK STATE DIVISION OF HUMAN
RIGHTS,

Defendant.

**DECLARATION
IN SUPPORT OF
DEFENDANT'S MOTION
TO DISMISS THE
AMENDED COMPLAINT**

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SUSAN ANSPACH, declares under penalty of perjury as follows:

1. I am an Assistant Attorney General in the Office of ANDREW M. CUOMO, Attorney General of the State of New York and attorney for Defendant the New York State Division of Human Rights ("NYSDHR" or "Defendant").

2. I submit this Declaration in support of Defendant's Motion to Dismiss the Amended Complaint because the Court lacks subject matter jurisdiction and the complaint fails to state a claim upon which relief can be granted, both of which are more fully set forth in the accompanying Memorandum of Law, dated April 18, 2008, and set forth in documents as exhibits upon which plaintiff relied in drafting the Amended Complaint or which plaintiff incorporated by reference and are statutory provisions and appendices of the laws of the State of New York.

3. Plaintiff was hired on or about June 2, 2005 to be the Regional Director of the Kings County Office of the NYSDHR. He alleges, inter alia, that as a civil service employee he was entitled to a hearing before being terminated for misconduct less than a year later, on May 12,

2006. See Amended Complaint, ¶¶17, 18, annexed hereto as Exhibit “A”. However, plaintiff’s position was a non-competitive job title that was exempt from the removal procedure set forth in Section 75 of the Civil Service Law because it was a position which was considered confidential and/or required the performance of functions influencing policy. The Civil Service website, www.cs.state.ny.us, identifies those titles that are exempt, alphabetically by job title as well as by state agency. A copy of the website page with this information including the relevant page from the 62 pages of job titles is attached hereto as Exhibit “B”.

4. Plaintiff also alleges that he was terminated in retaliation for complaining in writing about racial discrimination by the NYSDHR. The two documents identified by plaintiff, memoranda dated February 14, 2006 and April 14, 2006 (see Exhibit A, ¶43), are complaints by plaintiff concerning his performance evaluation and are both void of any complaint about or reference to racial discrimination. Copies of these documents, which are from plaintiff’s personnel file maintained by the NYSDHR, are collectively attached hereto as Exhibit “C”.

WHEREFORE, for the reasons set forth herein and in the accompanying Memorandum of Law, the Defendant respectfully requests that the Court dismiss plaintiff’s amended complaint with prejudice and grant such other and further relief as the Court deems just and proper.

Pursuant to 28 U.S.C. §1746 I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 2008.

/s/ Susan Anspach
SUSAN ANSPACH (SA 6968)